

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Bible Broadcast Church School)	Facility ID No. 88118
)	NAL/Acct. No. MB20051810105
Licensee of Station WMSD(FM))	File No. BRED-20040913AAR
Rose Township, Michigan)	FRN: 0011510450

FORFEITURE ORDER

Adopted: February 25, 2010

Released: February 26, 2010

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of one thousand five hundred dollars (\$1,500) to Bible Broadcast Church School (“Licensee”), licensee of Station WMSD(FM), Rose Township, Michigan (“Station”), for willfully violating Section 73.3539 of the Commission’s Rules (“Rules”) by failing to timely file a license renewal application.¹

II. BACKGROUND

2. On, December 20, 2005, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) to Licensee in the amount of one thousand five hundred dollars (\$1,500) for failing to timely file its license renewal application.² As noted in the NAL, Licensee’s renewal application for the Station for the license term should have been filed on June 1, 2004, four months prior to the October 1, 2004, expiration date,³ but was not. In fact, Licensee did not file the renewal application until September 13, 2004. Licensee provided no explanation for its failure to timely file the license renewal application. In response, Licensee filed a Petition for Reconsideration of the Proposed Forfeiture (“Petition”) on January 6, 2006.

3. In its Petition, Licensee states that its failure to timely file the renewal application was inadvertent. Licensee asserts that this reason warrants a cancellation or reduction of the assessed forfeiture.

¹ 47 C.F.R. § 73.3539.

²Letter to Bible Baptist Church School from Peter H. Doyle, Reference 1800B3 (MB Dec. 20, 2005). The Station’s renewal application (File No. BRED-20040913AAR) was granted on December 20, 2005.

³ See 47 C.F.R. §§ 73.1020, 73.3539(a).

III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,⁴ Section 1.80 of the Rules,⁵ and the Commission's *Forfeiture Policy Statement*.⁶ In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁷

5. Licensee does not dispute that it failed to file a timely renewal application for the Station, but states that this violation was unintentional. Specifically, Licensee states that this was its first experience filing a renewal application, and that it mistakenly believed that it had filed the application on April 22, 2004. In support of this assertion, Licensee submits a "screenshot" from the Commission's electronic filing system, known as CDBS, showing that a renewal document was created on April 22, 2004, and filed on September 13, 2004.⁸ This indicates that Licensee created its application on April 22, 2004, but failed to complete the filing process by hitting the "File Form" button.⁹ As the Commission has held, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.¹⁰ In the context of a forfeiture action, "willful" does not require a finding that the rule violation was intentional. Rather, the term "willful" means that the violator knew that it was taking (or in this case, not taking) the action in question, irrespective of any intent to violate the Rules.¹¹

6. We have considered Licensee's response to the NAL in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully¹² violated

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ Petition, Attachment 1. Licensee also indicates that it spoke to a Commission staff member on September 13, 2004, and was informed that it needed to correct its application but that it was otherwise acceptable for filing. Petition at 1. However, the Commission has long held that statements by individual Commission staff members are not binding on the Commission, and the Commission has repeatedly warned that parties who rely on staff advice or interpretations do so at their own risk. *See Roamer One, Inc. and Certain 220 MHz Non-Nationwide Licensees*, Order, 17 FCC Rcd 3287, n.26 (2002), *citing Applications of Hinton Telephone Company*, Memorandum Opinion and Order on Reconsideration, 10 FCC Rcd 11625, 11637 (1995) and *AAT Electronics Corp.*, 53 RR 2d 1241, 1225-26 (1983), *aff'd sub nom., P&R Temmer v. FCC*, 743 F.2d 918, 931 (D.C. Cir. 1984).

⁹ *See UA-ASU-TSU Educational Radio Corporation*, Forfeiture Order, 24 FCC Rcd 14355, 14356 (MB 2009) (Licensee's timely "creation" of form in CDBS prior to untimely filing does not mitigate late filing violation).

¹⁰ *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*") (stating that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance"); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358, 358 (1986) (stating that "employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations").

¹¹ *See Five Star Parking d/b/a Five Star Taxi Dispatch*, Forfeiture Order, 23 FCC Rcd 2649, 2651 (EB 2008) (declining to reduce or cancel forfeiture for late-filed renewal based on licensee's administrative error); *Southern California*, 6 FCC Rcd at 4387. *See also Domtar Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13811, 13815 (EB 2006); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (EB 2006).

¹² Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. No. 97-

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Section 73.3539 of the Rules, and that no mitigating circumstances warrant cancellation or further reduction of the proposed forfeiture amount.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,¹³ that Bible Broadcast Church School SHALL FORFEIT the sum of one thousand five hundred dollars (\$1,500) to the United States for willfully violating Section 73.3539 of the Commission's Rules.

8. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁴ Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank—Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).¹⁵ Requests for payment of the full amount of the forfeiture under an installment plan should be sent to: Associate Managing Director-Financial Operations, Room 1-A625, 445 12th Street, S.W., Washington, D.C. 20554.¹⁶

9. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail, Return Receipt Requested, to Dr. Paul E. Heaton, Station Manager, Bible Broadcast Church School, P.O. Box 42, Lupton, Michigan 48635.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

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765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. *See Southern California*, 6 FCC Rcd at 4387-88.

¹³ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

¹⁴ 47 U.S.C. § 504(a).

¹⁵ *See* 47 C.F.R. § 1.1914.

¹⁶ *Id.*